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October 29, 2024

Hon. Ona T. Wang
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *The New York Times Co. v. Microsoft Corp., et al.* No. 1:23-cv-11195;
New York Daily News, LP, et al. v. Microsoft Corp., et al., No. 1:24-cv-
3285

Dear: Magistrate Judge Wang:

The New York Times Company (“The Times”) and the Daily News Plaintiffs (together, the “News Plaintiffs”) respectfully submit the below updates to the proposed agenda for the October 30th status conference (Dkt. 262). The News Plaintiffs and Defendants worked collaboratively to prepare this update, and the News Plaintiffs then sent this final update to Defendants and proposed the parties jointly file this submission. The News Plaintiffs have not yet heard back from Defendants as to this final version, but did not want to delay in getting this to the Court.

The below does not contain any further argument or additions to the agenda and simply indicates which disputes have been resolved in an effort to aid the Court’s preparation for the conference. Issues that have been resolved are so indicated.

Further, to the extent that doing so would not otherwise burden the Court, the News Plaintiffs request that their issues be heard before the issues presented by Class Plaintiffs. Class Plaintiffs have agreed to this request.

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I. UPDATES TO PRIOR DISPUTES ADDRESSED AT THE SEPTEMBER 12, 2024 CONFERENCE

- A. Dkt. 128 – ~~The Times’s motion to compel OpenAI to produce documents concerning large language models developed before 2022, specifically GPT (released in 2018), GPT-2 (released in 2019), and GPT-3 (released in 2020)~~ [RESOLVED]
- B. Dkt. 141 – The Times’s motion to compel OpenAI to produce documents in response to RFP 6 (communications regarding licensing agreements) and RFP 11 (documents concerning OpenAI’s formation of a for-profit entity).
- C. Dkt. 204 – The Times’s Motion to Compel OpenAI to Produce Documents from Eight Additional Custodians
- D. Dkt. 221 – ~~The Times’s motion to compel Microsoft to re-review the documents it designated as “Highly Confidential—Attorneys’ Eyes Only”~~ [RESOLVED]
- E. Dkt. 228 – The Times’s motion to compel OpenAI to apply additional search terms to its custodians’ ESI
- F. Model Inspection, Training Data Inspection, Log Data, and Source Code

II. NEW DISPUTES THAT HAVE MATERIALIZED SINCE THE SEPTEMBER 12, 2024 CONFERENCE

A. *Issues Raised by Defendants*

- 1. The Times’ Responses to Microsoft RFPs and Interrogatories
 - a. Disputes remain as to RFPs 22, 24, 25, 40, and 47 and Interrogatory 2
- 2. The Times’ ESI Custodians
- 3. Date Ranges of The Times’s Searches for Responsive Documents
- 4. The Times’ Responses to OpenAI’s RFPs and Interrogatories
 - a. Disputes remain as to OpenAI RFPs 35, 37, 70, 76 and 82
- 5. OpenAI’s Issues with Daily News Plaintiffs’ Compliance With Their ESI and Document Discovery Obligations

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6. OpenAI's Opposition to the News Plaintiffs' Disclosure of Highly Confidential Material to Dr. Baeza-Yates

B. *Issues Raised by Plaintiffs*

1. Microsoft's ESI Custodians [RESOLVED]
2. Microsoft Responses to The Times's RFPs
 - a. Disputes remain as to RFP 67 and other RFPs related to Microsoft's Generative AI Products and Services
3. The Scope of OpenAI's Products Subject to Discovery
4. OpenAI's Responses to RFPs and Interrogatories
 - a. Resolved disputes as to RFPs 27, 44, 53, 48, 51, 74–77, and 79–81
 - b. Disputes remain as to RFPs 18, 26, 45, 47, 52, 78, 84–85, and Daily News Interrogatory 2

Sincerely,

/s/ Ian B. Crosby

Ian B. Crosby

/s/ Steven Lieberman

Steven Lieberman